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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 722.

IN THE MATTER

of

CONSOLIDATED TEXTILE CORPORATION,

Debtor.

LILLIAN H. WILLIS,

Petitioner,

v.

CONSOLIDATED TEXTILE CO., INC. and MANUFACTURERS TRUST COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF IN OPPOSITION OF CONSOLIDATED TEXTILE CO., INC.

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Opinions Below.

The Opinion of the District Court (R. 200-201)* is unreported. The Opinion of the Court of Appeals (R. 70) is reported in 178 F.2d 924.

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* Record references are to folios numbered in the margins of pages.

Jurisdiction.

The judgment of the Court of Appeals was entered January 11, 1950. The petition for a writ of certiorari was filed March 30, 1950 and served April 4, 1950. The jurisdiction of this Court is invoked under Sections 24(c) and 121 of the Bankruptcy Act and Section 1254(1) of the Judicial Code, as amended by the Act of June 25, 1948.

Reasons for Denying Petition.

This case presents no important question of federal law meriting a review by this Court.

The Court below affirmed an order of the District Court denying petitioner's motion for an order reopening a 77B bankruptcy proceeding to permit petitioner to participate in a corporate reorganization after the expiration of the bar date (July 19, 1948) fixed by the final decree (R. 70), which was made July 19, 1943 and which finally closed the bankruptcy proceeding (R. 75). These rulings are strictly in accord with, and are plainly required by, the express provisions of Sections 204 and 205 of the Bankruptcy Act. Rule 60(b) of the Federal Rules of Civil Procedure, providing for relief from a final judgment for neglect or other cause, cannot avail the petitioner, since, under General Order 37, those rules apply only when not inconsistent with the Bankruptcy Act.

Jurisdiction to terminate and reopen reorganization proceedings is thus prescribed by the provisions of the Bankruptcy Act. There is no conflict among the Courts of Appeals or the District Courts in the interpretation of those provisions, and motions to reopen such proceedings only to permit participation in the plan after the bar date fixed in the final decree have, without exception, been denied.

Statutes Involved.

THE BANKRUPTCY ACT.

"Sec. 2. *Creation of Courts of Bankruptcy and Their Jurisdiction.*—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under the Act, * * * to * * * (8) Close estates, by approving the final accounts and discharging the trustees, * * *; and reopen estates for cause shown; * * *."

"Sec. 119. Whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time."

"Sec. 204. Upon distribution, as provided in section 224 of this Act, the judge may, upon notice to all persons affected, fix a time, to expire not sooner than five years after the final decree closing the estate, within which, as provided in the plan or final decree—(1) the creditors, other than holders of securities, shall file, assign, transfer, or release their claims; and (2) the holders of securities shall present or surrender their securities. After such time no such claim or stock shall participate in the distribution under the plan."

"Sec. 205. The securities or cash remaining unclaimed at the expiration of the time fixed as provided in section 204 of this Act, or of any extension thereof, shall become the property of the debtor or of the new corporation acquiring the assets of the debtor under the plan, as the case may be, free and clear of any and all claims and interests."

FEDERAL RULES OF CIVIL PROCEDURE.

"Rule 60.—Relief from Judgment or Order. (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; * * * or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * *"

Statement.

The Debtor's 77B petition was filed on December 13, 1935 (R. 26). Hearings were held before a Master, and an amended Plan of Reorganization (hereinafter called the "Plan", was proposed, which provided, *inter alia*, for the acquisition of the assets of the Debtor by respondent, Consolidated Textile Co., Inc. (hereinafter called the "Corporation") and that bonds of the Debtor could be exchanged for income debentures and stock of the Corporation (R. 26). The Plan was confirmed by decree of May 9, 1938 (R. 29). Thereafter it was consummated and the Debtor dissolved (R. 37). By order to show cause dated June 4, 1943, a hearing was called to be held for the purpose of making a final decree. The hearing was held on June 30, 1943 and on July 19, 1943 a final decree was made terminating these proceedings and finally closing the estate (R. 38-40).

The final decree determined that the notice of the hearing, given as required by the order to show cause, was good, timely and sufficient notice to all persons; and the applica-

tion of Sections 204 and 205 of Chapter X of the Bankruptcy Act to these proceedings was found to be practical. The decree fixed July 19, 1948 (five years thence) as the time within which the Debtor's bonds should be surrendered, and, in accordance with Sections 204 and 205 of the Bankruptcy Act, provided that after such date no bonds were to participate in the Plan and that the securities, cash and other property of the Debtor remaining unclaimed by bondholders on July 19, 1948 became the property of the Corporation free and clear (R. 64-75).

The petitioner endeavored to exchange her bonds in September 1948 and was then advised of the expiration of the bar date (R. 12). Thereafter, petitioner moved to reopen the bankruptcy proceedings stating that she had no actual notice of this proceeding and had been oblivious to her rights. It was not claimed that the Bankruptcy Court committed any error prior to or in making the final decree.

The order of the District Court denying the motion was made May 9, 1949 and affirmed by the Court of Appeals for the Second Circuit on January 11, 1950.

Argument.

The District Court did not specify whether or not this motion was denied as a matter of law or discretion. If the District Court denied the motion in its discretion, its decision would not be subject to review. There is ample evidence in the record that the petitioner was foreclosed from exchanging her bonds solely by her own neglect; that due notice was given of all proceedings and that the same were conducted in full compliance with the law; that these proceedings were commenced and conducted not in secrecy but with the normal amount of publicity; that a proper inquiry made at any time between the commencement of

these proceedings in 1935 and the expiration of the bar date in 1948 would have disclosed their nature and status and the rights of bondholders; and that, since the expiration of the bar date in 1948, the stock of the Corporation has been publicly traded in and the rights of third persons have thus intervened.

The petition to this Court, however, is based upon the assumption that the motion was denied, not in the discretion of the court, but as a matter of law, and the only question raised is whether the District Court has jurisdiction to reopen bankruptcy proceedings for the purpose of granting such a motion. The following argument, addressed to that question, necessarily proceeds on the same assumption.

1. The District Court Correctly Held That, Under the Provisions of the Bankruptcy Act, It Was Without Jurisdiction to Grant Petitioner's Motion.

The application of Sections 204 and 205 of the Bankruptcy Act was found to be practical, and, pursuant thereto, July 19, 1948 was fixed as the bar date upon which the rights of bondholders to participate under the Plan terminated (R. 70).

Section 204 of the Bankruptcy Act expressly provides that the court may fix a time, to expire not sooner than five years after the final decree, within which the holders must surrender securities and after which no claim may participate in the plan. Section 205 provides that the securities or cash remaining unclaimed after the bar date, shall become the absolute property of the debtor or its successor.

Despite these express provisions, petitioner contends that under Section 2, sub. a(8), and Section 119 of the Bankruptcy Act the Court had the power to grant the relief requested. The same contention, under almost identical

facts, was considered by the Court of Appeals for the Second Circuit in *Duebler* v. *Sherneth Corporation,* 160 F. 2d 472 (2 Cir. 1947) and rejected, the Court saying (Clark, J):

> "With such explicit statutory mandate it would seem clear that no discretionary power to disregard the bar provision or to set aside the final order remained in the court. This was the direct holding of the Third Circuit in the well-considered case of In re Peyton Realty Co., 3 Cir., 148 F. 2d 771, which was cited and followed in Knapp *v.* Detroit Leland Hotel Co., supra; and see also In re Sherland Bldg. Corporation, D. C. N. D. Ind., 29 F. Supp. 985; In re Tom Moore Distillery Co., D. C. W. D. Ky., 52 F. Supp. 938. Even in the absence of a closing order, we have refused a late application for an extension of time for the exchange of securities. North American Car Corporation *v.* Peerless Weighing & Vending Mach. Corporation, 2 Cir., 143 F. 2d 938, a case which illustrates not only the settled judicial reluctance to reopen estates once closed for further claims, but also the court's lack of continued jurisdicton over a reorganized corporation * * *" (p. 474).

With reference to the provisions of Section 2, sub. a(8), and Section 119, the Court said:

> "* * * The general provision for the reopening of bankrupt estates, §2, sub. a(8), 11 U. S. C. A. §11, sub. a(8), is not relevant, since reopening is not granted where the court has no power to grant the ultimate relief sought. Milando *v.* Perrone, 2 Cir., 157 F. 2d 1002. Sec. 119, 11 U. S. C. A. §519, granting power to the reorganization court for cause shown to extend the time which it is required or permitted to fix in the first instance, we think refers only to time periods before the ultimate closing of the estate. This seems to be made clear by §205, 11 U. S. C. A.

> §605, which provides that the securities remaining unclaimed at the expiration of the time fixed under §204, 'or of any extension thereof, shall become the property of the debtor or of the new corporation acquiring the assets of the debtor under the plan, as the case may be, free and clear of any and all claims and interests.' Hence time may be extended before the bar has fallen, and not afterwards'' (p. 474).

The rule, thus stated in the *Duebler* case, that the district court is without jurisdiction to reopen a reorganization proceeding to permit the exchange of securities after the bar date fixed in a final decree, has been consistently applied.

> In re *Peyton Realty Co.*, 148 F. 2d 771 (3 Cir. 1945);
> In re *Detroit Leland Hotel Co.*, 61 F. Supp. 686 (D. C. E. D. Mich. 1945), aff'd. 153 F. 2d 715;
> In re *Tom Moore Distillery Co.*, 52 F. Supp. 938 (D. C. W. D. Ky. 1943);
> In re *Sherland Bldg. Corporation*, 29 F. Supp. 985 (D. C. N. D. Ind. 1939).

Not one of the cases cited by petitioner in her brief supports her contention that the Court below had jurisdiction to reopen these proceedings for the purpose of extending the bar date. In *Tuffy* v. *Nichols*, 120 F. 2d 906 (2 Cir. 1941), cert. denied 314 U. S. 660, the estate of a deceased bankrupt was reopened to recover previously unadministered assets. No corporate reorganization, final decree, or bar date was involved. Nor are *North American Car Corp.* v. *Peerless W. & V. Mach. Corp.*, 143 F. 2d 938 (2 Cir. 1944); *Kelby* v. *Prudence Bonds Corporation*, 140 F. 2d 185 (2 Cir. 1944), and *Mohonk Realty Corporation* v. *Wise Shoe Stores*, 111 F. 2d 287 (2 Cir. 1940) (Petitioner's brief, page

12) in point. All three were decided by the Court of Appeals for the Second Circuit and cited by that Court in its opinion in the *Duebler* case. Relief was denied in each.

In the *North American Car Corp.* case, despite the absence of a closing order, a late application for an extension of time to permit the exchange of securities was denied. Neither *Kelby* v. *Prudence-Bonds Corporation* nor *Mohonk Realty Corporation* v. *Wise Shoe Stores* involved such an application.

In *Pfister* v. *Finance Corp.*, 317 U. S. 144 (1942), this Court considered whether Section 39(c) of the Bankruptcy Act limited the jurisdiction of the reviewing court to act, and held that there was only a limitation on the person aggrieved to file his petition as a matter of right. Mr. Justice Reed, delivering the opinion of the Court, stated that a conflict of the circuits on the question raised had impelled the granting of the writ.

The unanimity with which the rule in the *Duebler* case has been applied where the precise question has arisen belies petitioner's contention that under the Bankruptcy Act the district court had jurisdiction to grant her motion.

2. The District Court Correctly Held That Rule 60(b) of the Federal Rules of Civil Procedure Is Inapplicable.

Rule 60(b) provides that the court may relieve a party from a final judgment, order, or proceeding for specified reasons, including that of excusable neglect and, under subdivision 6, for any other reason justifying relief from the operation of the judgment. Petitioner contends that Rule 60(b) is applicable in bankruptcy and that, under subdivision 6 thereof, the Court below had jurisdiction to grant this motion.

Rule 60 was designed to provide relief from the inflexibility of the term rule which had theretofore limited the power of the district court to reconsider its final judgments. The term rule, however, had no application to the Bankruptcy Court, which sat continuously and had no terms. The background of Rule 60 thus suggests its inapplicability in bankruptcy.

In *Grand Union Equipment Co.* v. *Lippner*, 167 F. 2d 958 (2 Cir. 1948) (Petitioner's brief, page 8), the Court of Appeals for the Second Circuit recognized the suggestion that the inconsistency in the application of the rule to bankruptcy proceedings renders it inapplicable under General Order 37. The opinion in that case makes it clear that the control of the Bankruptcy Court over its orders has been generally upheld without reference to the Rule.

In any event, this petition does not raise the broad question of whether Rule 60(b) is generally applicable or inapplicable in bankruptcy. The petition itself states quite clearly that the precise question raised thereby is the power of the district court to reopen bankruptcy proceedings for the sole purpose of enabling the petitioner to exchange her bonds after the expiration of the bar date.

Rule 81(a)(1) of the Federal Rules of Civil Procedure provides that the Rules "do not apply to proceedings in bankruptcy * * * except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States." General Order 37, promulgated by this Court pursuant to Section 30 of the Bankruptcy Act, provides that the Federal Rules shall be followed in bankruptcy "in so far as they are not inconsistent with the Act." It follows inescapably that Rule 60(b) cannot confer upon the district court jurisdiction denied it by the Bankruptcy Act. Under that Act the district court has no power to reopen bankruptcy proceedings for the

purpose of extending the bar date fixed in a final decree. Rule 60(b) cannot confer upon the court that jurisdiction.

The cases cited by petitioner in her brief are not in point. In *Grand Union Equipment Co.* v. *Lippner, supra,* a creditor asked only to reduce a claim to judgment so as to enable it to bring an action on an insurance policy issued to the debtor, and requested that the court's final injunction against the commencement of actions be modified accordingly. The order of modification entered was limited to the prosecution of such action, and it expressly provided that no execution should issue against the assets of the debtor.

In neither In re *Lowerree,* 157 F. 2d 831 (2 Cir. 1946), nor *Perlman* v. *322 West Seventy-Second Street Co.,* 127 F. 2d 716 (2 Cir. 1942) was a corporate reorganization or a final decree involved. In each, relief was denied.

The case upon which the petitioner principally relies is *Klapprott* v. *United States,* 335 U. S. 601 (1949), modified 336 U. S. 942. In that case relief was sought from a judgment of denaturalization. Bankruptcy proceedings were not involved.

The provisions of the Bankruptcy Act authorize the Bankruptcy Court to prescribe the manner and method of giving notice, to confirm a plan of reorganization, to enter a final decree, and to bar the claims of creditors not presented within the time limited therefor. The application of Rule 60(b) to this motion would be totally inconsistent with the provisions of the Act. Rule 60(b) is therefore, under the provisions of General Order 37, inapplicable to the instant motion.

3. There Is No Basis for Granting a Writ of Certiorari in This Case.

The petition does not disclose that there is a federal question of substance which should be determined by this

Court. There is no apparent conflict between the circuits or even between the district courts with respect to the questions raised herein.

When the precise question has been raised, the courts have uniformly held that, under the Bankruptcy Act, the district court is without jurisdiction to reopen a reorganization proceeding to permit the exchange of securities after the expiration of the bar date fixed in a final decree. In view of the limitation placed on the application of the Federal Rules in Bankruptcy by General Order 37, Rule 60(b) is not to be construed as conferring upon the Court jurisdiction not conferred by the Bankruptcy Act.

Conclusion.

The Courts below correctly held that, under the Bankruptcy Act, there was no jurisdiction to grant petitioner's motion, and that Rule 60(b) of the Federal Rules of Civil Procedure was inapplicable.

Dated: May 2, 1950.

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